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Jeffer Mangels
Butler & Marmaro LLP

JEFFER, MANGELS, BUTLER & MARMARO LLP
PAUL L. WARNER (Bar No. 54757)
J.T. WELLS BLAXTER (Bar No. 190222)
Two Embarcadero Center, Fifth Floor
San Francisco, California 94111-3824
Telephone: (415) 398-8080
Facsimile: (415) 398-5584

Attorneys for Defendants Forever 21, Inc.;
Forever 21 Retail, Inc.; Forever 21
Logistics, LLC; Forever XXI, Inc.;
and For Love 21

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

bebe stores, inc., a California corporation; and
bebe studio, inc., a California corporation,

Plaintiffs,

v.

Forever 21, Inc., a Delaware corporation;
Forever 21 Retail, Inc., a California
corporation; Forever 21 Logistics, LLC, a
Delaware limited liability company; Forever
XXI, Inc., a California corporation, and For
Love 21,

Defendants.

CASE NO. C 07 0035 MJJ

**ANSWER OF DEFENDANTS FOREVER 21,
INC., FOREVER 21 RETAIL, INC.,
FOREVER 21 LOGISTICS, LLC, FOREVER
XXI, INC. AND FOR LOVE 21 TO
AMENDED COMPLAINT FOR
COPYRIGHT INFRINGEMENT**

Date: none
Time: none
Dept: 11
Judge: Hon. Martin J. Jenkins
No trial date

Defendants Forever 21, Inc.; Forever 21 Retail, Inc.; Forever 21 Logistics, LLC;
Forever XXI, Inc.; and For Love 21 (collectively "Forever 21") for themselves alone, hereby
answer the Amended Complaint for Copyright Infringement, Tortious Interference with Prospective
Economic Advantage, Misappropriation, Lanham Act Violations, Reverse Palming Off, Unfair
Competition, Conspiracy, Trademark Infringement, Trademark Dilution, and Breach of Contract
filed by plaintiffs bebe stores, inc. and bebe studio, inc. on or about May 18, 2007 as follows:

PARTIES

1
2 1. Forever 21 is without knowledge or information sufficient to form a belief as
3 to the truth or falsity of the allegations of Paragraph 1 of the Amended Complaint and therefore
4 denies those allegations on that basis.

5 2. Forever 21 is without knowledge or information sufficient to form a belief as
6 to the truth or falsity of the allegations of Paragraph 2 of the Amended Complaint and therefore
7 denies those allegations on that basis.

8 3. In answer to Paragraph 3 of the Amended Complaint, Forever 21 denies that
9 Forever 21, Inc. operates or does business in California through retail stores but admits that Forever
10 21, Inc. does business in California through its website.

11 4. Forever 21 denies that Forever 21, Retail, Inc. does business through a
12 website but otherwise admits the allegations of Paragraph 4.

13 5. Admitted.

14 6. In answer to Paragraph 6 of the Amended Complaint, Forever 21 denies each
15 and every allegation of said Paragraph.

16 7. In answer to Paragraph 7 of the Amended Complaint, Forever 21 admits that
17 For Love 21 is a d/b/a of Forever 21 Retail, and otherwise denies the allegations of such Paragraph.

18 8. Admitted.

19 **JURISDICTION AND VENUE**

20 9. In answer to Paragraph 9 of the Amended Complaint, Forever 21 denies each
21 and every allegation of said Paragraph.

22 10. In answer to Paragraph 10 of the Amended Complaint, Forever 21 denies
23 each and every allegation of said Paragraph.

24 11. In answer to Paragraph 11 of the Amended Complaint, Forever 21 denies
25 each and every allegation of said Paragraph.

26 **INTERDISTRICT ASSIGNMENT**

27 12. In answer to Paragraph 12 of the Amended Complaint, Forever 21 denies
28 each and every allegation of said Paragraph.

FACTUAL BACKGROUND

13. Forever 21 is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 13 and therefore denies those allegations on that basis.

14. Forever 21 is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 14 and therefore denies those allegations on that basis.

15. Forever 21 is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 15 and therefore denies those allegations on that basis.

16. Forever 21 is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 16 and therefore denies those allegations on that basis.

17. Forever 21 is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 17 and therefore denies those allegations on that basis.

18. Forever 21 is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 18 and therefore denies those allegations on that basis.

19. Forever 21 is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 19 and therefore denies those allegations on that basis.

20. Forever 21 is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 20 and therefore denies those allegations on that basis.

21. Forever 21 is without knowledge or information sufficient to form a belief as to the truth or falsity of the allegations of Paragraph 21 and therefore denies those allegations on that basis.

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1 22. Forever 21 is without knowledge or information sufficient to form a belief as
2 to the truth or falsity of the allegations of Paragraph 22 and therefore denies those allegations on
3 that basis.

4 23. In answer to Paragraph 23, Forever 21 admits that Fashion 21, Inc. was
5 formed before Forever 21, Inc. but otherwise denies each and every allegation of said Paragraph.

6 24. In answer to Paragraph 24, Forever 21 admits that it attempts to sell its
7 products to everyone, including young women but otherwise denies each and every allegation of
8 said Paragraph.

9 25. Forever 21 is without knowledge or information sufficient to form a belief as
10 to the truth or falsity of the allegations of Paragraph 25 and therefore denies those allegations on
11 that basis.

12 26. In answer to Paragraph 26 of the Amended Complaint, Forever 21 denies
13 each and every allegation of said Paragraph.

14 27. In answer to Paragraph 27 of the Amended Complaint, Forever 21 denies
15 each and every allegation of said Paragraph.

16 27a. In answer to Paragraph 27a of the Amended Complaint, Forever 21
17 denies each and every allegation of said Paragraph.

18 27b. In answer to Paragraph 27b of the Amended Complaint, Forever 21
19 denies each and every allegation of said Paragraph.

20 27c. In answer to Paragraph 27c of the Amended Complaint, Forever 21
21 denies each and every allegation of said Paragraph.

22 27d. In answer to Paragraph 27d of the Amended Complaint, Forever 21
23 denies each and every allegation of said Paragraph.

24 27e. In answer to Paragraph 27e of the Amended Complaint, Forever 21
25 denies each and every allegation of said Paragraph.

26 27f. In answer to Paragraph 27f of the Amended Complaint, Forever 21
27 denies each and every allegation of said Paragraph.

28 27g. In answer to Paragraph 27g of the Amended Complaint, Forever 21

1 denies each and every allegation of said Paragraph.

2 27h. In answer to Paragraph 27h of the Amended Complaint, Forever 21
3 denies each and every allegation of said Paragraph.

4 28. In answer to Paragraph 28 of the Amended Complaint, Forever 21 denies
5 each and every allegation of said Paragraph.

6 29. In answer to Paragraph 29 of the Amended Complaint, Forever 21 denies
7 each and every allegation of said Paragraph.

8 30. In answer to Paragraph 30 of the Amended Complaint, Forever 21 denies
9 each and every allegation of said Paragraph.

10 30a. In answer to Paragraph 30a of the Amended Complaint, Forever 21
11 denies each and every allegation of said Paragraph.

12 30b. In answer to Paragraph 30b of the Amended Complaint, Forever 21
13 denies each and every allegation of said Paragraph.

14 30c. In answer to Paragraph 30c of the Amended Complaint, Forever 21
15 denies each and every allegation of said Paragraph.

16 30d. In answer to Paragraph 30d of the Amended Complaint, Forever 21
17 denies each and every allegation of said Paragraph.

18 30e. In answer to Paragraph 30e of the Amended Complaint, Forever 21
19 denies each and every allegation of said Paragraph.

20 30f. In answer to Paragraph 30f of the Amended Complaint, Forever 21
21 denies each and every allegation of said Paragraph.

22 30g. In answer to Paragraph 30g of the Amended Complaint, Forever 21
23 denies each and every allegation of said Paragraph.

24 30h. In answer to Paragraph 30h of the Amended Complaint, Forever 21
25 denies each and every allegation of said Paragraph.

26 30i. In answer to Paragraph 30i of the Amended Complaint, Forever 21
27 denies each and every allegation of said Paragraph.

28 30j. In answer to Paragraph 30j of the Amended Complaint, Forever 21

denies each and every allegation of said Paragraph.

30k. In answer to Paragraph 30k of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

30l. In answer to Paragraph 30l of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

30m. In answer to Paragraph 30m of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

30n. In answer to Paragraph 30n of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

30o. In answer to Paragraph 30o of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

30p. In answer to Paragraph 30p of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

30q. In answer to Paragraph 30q of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

30r. In answer to Paragraph 30r of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

30s. In answer to Paragraph 30s of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

30t. In answer to Paragraph 30t of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

31. In answer to Paragraph 31 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

32. In answer to Paragraph 32 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

33. In answer to Paragraph 33 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

34. In answer to Paragraph 34 of the Amended Complaint, Forever 21 denies

1 each and every allegation of said Paragraph.

2 35. In answer to Paragraph 35 of the Amended Complaint, Forever 21 denies
3 each and every allegation of said Paragraph.

4 36. In answer to Paragraph 36 of the Amended Complaint, Forever 21 denies
5 each and every allegation of said Paragraph.

6 37. Forever 21 is without knowledge or information sufficient to form a belief as
7 to the truth or falsity of the allegations of Paragraph 37 concerning bebe's origins, distribution and
8 advertising and therefore denies those allegations on that basis. As to the allegations that bebe has a
9 distinctive mark or has gained substantial recognition or consumer brand awareness, Forever 21
10 denies each and every allegation of said Paragraph.

11 38. In answer to Paragraph 38 of the Amended Complaint, Forever 21 denies
12 each and every allegation of said Paragraph.

13 39. Forever 21 is without knowledge or information sufficient to form a belief as
14 to the truth or falsity of the allegations of Paragraph 39 and therefore denies those allegations on
15 that basis.

16 40. Forever 21 is without knowledge or information sufficient to form a belief as
17 to the truth or falsity of the allegations of Paragraph 40 and therefore denies those allegations on
18 that basis.

19 41. Forever 21 is without knowledge or information sufficient to form a belief as
20 to the truth or falsity of the allegations of Paragraph 41 and therefore denies those allegations on
21 that basis.

22 42. Forever 21 is without knowledge or information sufficient to form a belief as
23 to the truth or falsity of the allegations of Paragraph 42 and therefore denies those allegations on
24 that basis.

25 43. Forever 21 is without knowledge or information sufficient to form a belief as
26 to the truth or falsity of the allegations of Paragraph 43 and therefore denies those allegations on
27 that basis.

28 44. Forever 21 is without knowledge or information sufficient to form a belief as

1 to the truth or falsity of the allegations of Paragraph 44 and therefore denies those allegations on
2 that basis.

3 45. Forever 21 is without knowledge or information sufficient to form a belief as
4 to the truth or falsity of the allegations of Paragraph 45 and therefore denies those allegations on
5 that basis.

6 46. Forever 21 is without knowledge or information sufficient to form a belief as
7 to the truth or falsity of the allegations of Paragraph 46 and therefore denies those allegations on
8 that basis.

9 47. Forever 21 is without knowledge or information sufficient to form a belief as
10 to the truth or falsity of the allegations of Paragraph 47 and therefore denies those allegations on
11 that basis.

12 48. Forever 21 is without knowledge or information sufficient to form a belief as
13 to the truth or falsity of the allegations of Paragraph 48 and therefore denies those allegations on
14 that basis.

15 49. Forever 21 is without knowledge or information sufficient to form a belief as
16 to the truth or falsity of the allegations of Paragraph 49 and therefore denies those allegations on
17 that basis.

18 50. Forever 21 is without knowledge or information sufficient to form a belief as
19 to the truth or falsity of the allegations of Paragraph 50 and therefore denies those allegations on
20 that basis.

21 51. Forever 21 is without knowledge or information sufficient to form a belief as
22 to the truth or falsity of the allegations of Paragraph 51 and therefore denies those allegations on
23 that basis.

24 52. Forever 21 is without knowledge or information sufficient to form a belief as
25 to the truth or falsity of the allegations of Paragraph 52 and therefore denies those allegations on
26 that basis.

27 53. In answer to Paragraph 53 of the Amended Complaint, Forever 21 denies
28 each and every allegation of said Paragraph.

54. In answer to Paragraph 54 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

55. In answer to Paragraph 55 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph on the grounds that the term “predecessor” has no legal definition or meaning.

56. In answer to Paragraph 56 of the Amended Complaint, Forever 21 admits that a lawsuit was filed in the Northern District of California, Case No. C-01-1451-MJJ. Except as specifically admitted herein, Forever 21 denies each and every allegation of said Paragraph.

57. In answer to Paragraph 57 of the Amended Complaint, Forever 21 admits that the lawsuit described in Paragraph 56 has been settled and dismissed. Except as specifically set forth herein, Forever 21 denies each and every allegation of said Paragraph.

58. In answer to Paragraph 58 of the Amended Complaint, Forever 21 admits that a final judgment was entered in the lawsuit described in Paragraph 56 of the Amended Complaint. Except as specifically set admitted herein, Forever 21 denies each and every allegation of said Paragraph.

59. In answer to Paragraph 59 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

FIRST CLAIM FOR RELIEF

(Copyright Infringement Against Forever 21)

60. This Paragraph does not require a response.

61. In answer to Paragraph 61 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

62. In answer to Paragraph 62 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

63. In answer to Paragraph 63 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

64. In answer to Paragraph 64 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

65. In answer to Paragraph 65 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

66. In answer to Paragraph 66 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

67. In answer to Paragraph 67 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

SECOND CLAIM FOR RELIEF

(Tortious Interference With Prospective Business Advantage)

68. This Paragraph does not require a response.

69. In answer to Paragraph 69 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

70. In answer to Paragraph 70 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

71. In answer to Paragraph 71 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

72. In answer to Paragraph 72 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

73. In answer to Paragraph 73 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

74. In answer to Paragraph 74 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

75. In answer to Paragraph 75 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

76. In answer to Paragraph 76 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

77. In answer to Paragraph 77 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

78. In answer to Paragraph 78 of the Amended Complaint, Forever 21 denies

each and every allegation of said Paragraph.

79. In answer to Paragraph 79 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

THIRD CLAIM FOR RELIEF

(Misappropriation of bebe's Designs Against Forever 21)

80. This Paragraph does not require a response.

81. In answer to Paragraph 81 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

82. In answer to Paragraph 82 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

83. In answer to Paragraph 83 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

84. In answer to Paragraph 84 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

85. In answer to Paragraph 85 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

86. In answer to Paragraph 86 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

87. In answer to Paragraph 87 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

88. In answer to Paragraph 88 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph..

FOURTH CLAIM FOR RELIEF

(Violation of Section 43(a) of the Lanham Act Against Forever 21)

89. This Paragraph does not require a response.

90. In answer to Paragraph 90 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

91. In answer to Paragraph 91 of the Amended Complaint, Forever 21 denies

1 each and every allegation of said Paragraph.

2 92. In answer to Paragraph 92 of the Amended Complaint, Forever 21 denies
3 each and every allegation of said Paragraph.

4 93. In answer to Paragraph 93 of the Amended Complaint, Forever 21 denies
5 each and every allegation of said Paragraph.

6 94. In answer to Paragraph 94 of the Amended Complaint, Forever 21 denies
7 each and every allegation of said Paragraph.

8 95. In answer to Paragraph 95 of the Amended Complaint, Forever 21 denies
9 each and every allegation of said Paragraph.

10 96. In answer to Paragraph 96 of the Amended Complaint, Forever 21 denies
11 each and every allegation of said Paragraph.

12 97. In answer to Paragraph 97 of the Amended Complaint, Forever 21 denies
13 each and every allegation of said Paragraph.

14 98. In answer to Paragraph 98 of the Amended Complaint, Forever 21 denies
15 each and every allegation of said Paragraph.

16 99. In answer to Paragraph 99 of the Amended Complaint, Forever 21 denies
17 each and every allegation of said Paragraph.

18 **FIFTH CLAIM FOR RELIEF**

19 (Common Law Reverse Palming-Off Against Forever 21)

20 100. This Paragraph does not require a response.

21 101. In answer to Paragraph 101 of the Amended Complaint, Forever 21 denies
22 each and every allegation of said Paragraph.

23 102. In answer to Paragraph 102 of the Amended Complaint, Forever 21 denies
24 each and every allegation of said Paragraph.

25 103. In answer to Paragraph 103 of the Amended Complaint, Forever 21 denies
26 each and every allegation of said Paragraph.

27 104. In answer to Paragraph 104 of the Amended Complaint, Forever 21 denies
28 each and every allegation of said Paragraph.

1 105. In answer to Paragraph 105 of the Amended Complaint, Forever 21 denies
2 each and every allegation of said Paragraph.

3 106. In answer to Paragraph 106 of the Amended Complaint, Forever 21 denies
4 each and every allegation of said Paragraph.

5 107. In answer to Paragraph 107 of the Amended Complaint, Forever 21 denies
6 each and every allegation of said Paragraph.

7 108. In answer to Paragraph 108 of the Amended Complaint, Forever 21 denies
8 each and every allegation of said Paragraph.

9 **SIXTH CLAIM FOR RELIEF**

10 (Common Law Misappropriation Against Forever 21)

11 109. This Paragraph does not require a response.

12 110. In answer to Paragraph 110 of the Amended Complaint, Forever 21 denies
13 each and every allegation of said Paragraph.

14 111. In answer to Paragraph 111 of the Amended Complaint, Forever 21 denies
15 each and every allegation of said Paragraph.

16 112. In answer to Paragraph 112 of the Amended Complaint, Forever 21 denies
17 each and every allegation of said Paragraph.

18 113. In answer to Paragraph 113 of the Amended Complaint, Forever 21 denies
19 each and every allegation of said Paragraph.

20 114. In answer to Paragraph 114 of the Amended Complaint, Forever 21 denies
21 each and every allegation of said Paragraph.

22 115. In answer to Paragraph 115 of the Amended Complaint, Forever 21 denies
23 each and every allegation of said Paragraph.

24 116. In answer to Paragraph 116 of the Amended Complaint, Forever 21 denies
25 each and every allegation of said Paragraph.

26 **SEVENTH CLAIM FOR RELIEF**

27 (Unfair Competition Pursuant to Cal.B&P Code Sec. 17200 et.seq. Against Forever 21)

28 117. This Paragraph does not require a response.

1 118. In answer to Paragraph 118 of the Amended Complaint, Forever 21 admits
2 that plaintiffs have quoted a portion of B&P Code Sec. 17200 and otherwise deny each and every
3 allegation of said paragraph.

4 119. In answer to Paragraph 119 of the Amended Complaint, Forever 21 admits
5 that it sells clothes to, among others, younger women, and otherwise denies each and every
6 allegation of said paragraph.

7 120. In answer to Paragraph 120 of the Amended Complaint, Forever 21 denies
8 each and every allegation of said Paragraph.

9 121. In answer to Paragraph 121 of the Amended Complaint, Forever 21 denies
10 each and every allegation of said Paragraph.

11 122. In answer to Paragraph 122 of the Amended Complaint, Forever 21 denies
12 each and every allegation of said Paragraph.

13 123. In answer to Paragraph 123 of the Amended Complaint, Forever 21 denies
14 each and every allegation of said Paragraph.

15 124. In answer to Paragraph 124 of the Amended Complaint, Forever 21 denies
16 each and every allegation of said Paragraph.

17 125. In answer to Paragraph 125 of the Amended Complaint, Forever 21 denies
18 each and every allegation of said Paragraph.

19 **EIGHTH CLAIM FOR RELIEF**

20 (Trademark Infringement Under Sections 32(1) and 34(d) of the Lanham Act)

21 126. This Paragraph does not require a response.

22 127. In answer to Paragraph 127 of the Amended Complaint, Forever 21 denies
23 each and every allegation of said Paragraph.

24 128. In answer to Paragraph 128 of the Amended Complaint, Forever 21 denies
25 each and every allegation of said Paragraph.

26 129. In answer to Paragraph 129 of the Amended Complaint, Forever 21 denies
27 each and every allegation of said Paragraph.

28 130. In answer to Paragraph 130 of the Amended Complaint, Forever 21 denies

each and every allegation of said Paragraph.

NINTH CLAIM FOR RELIEF

(Trademark Dilution Under Section 43(c) of the Lanham Act)

131. This Paragraph does not require a response.

132. In answer to Paragraph 132 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

133. In answer to Paragraph 133 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

134. In answer to Paragraph 134 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

TENTH CLAIM FOR RELIEF

(Trademark Infringement and Unfair Competition Under California Common Law)

135. This Paragraph does not require a response.

136. In answer to Paragraph 136 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

137. In answer to Paragraph 137 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

138. In answer to Paragraph 138 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

139. In answer to Paragraph 139 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

140. In answer to Paragraph 140 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

ELEVENTH CLAIM FOR RELIEF

(Trademark Dilution Under Cal. B&P Code Sec. 14330)

141. This Paragraph does not require a response.

142. In answer to Paragraph 142 of the Amended Complaint, Forever 21 denies each and every allegation of said Paragraph.

1 143. In answer to Paragraph 143 of the Amended Complaint, Forever 21 denies
2 each and every allegation of said Paragraph.

3 144. In answer to Paragraph 144 of the Amended Complaint, Forever 21 denies
4 each and every allegation of said Paragraph.

5 **TWELFTH CLAIM FOR RELIEF**

6 (Breach of Contract)

7 145. This Paragraph does not require a response.

8 146. In answer to Paragraph 146 of the Amended Complaint, Forever 21 denies
9 each and every allegation of said Paragraph.

10 147. In answer to Paragraph 147 of the Amended Complaint, Forever 21 denies
11 each and every allegation of said Paragraph.

12 148. In answer to Paragraph 148 of the Amended Complaint, Forever 21 denies
13 each and every allegation of said Paragraph.

14 149. In answer to Paragraph 149 of the Amended Complaint, Forever 21 denies
15 each and every allegation of said Paragraph.

16 **THIRTEENTH CLAIM FOR RELIEF**

17 (Civil Conspiracy)

18 150. This paragraph does not require a response.

19 151. In answer to Paragraph 151 of the Amended Complaint, Forever 21 denies
20 each and every allegation of said Paragraph.

21 152. In answer to Paragraph 152 of the Amended Complaint, Forever 21 denies
22 each and every allegation of said Paragraph.

23 153. In answer to Paragraph 153 of the Amended Complaint, Forever 21 denies
24 each and every allegation of said Paragraph.

25 154. In answer to Paragraph 154 of the Amended Complaint, Forever 21 denies
26 each and every allegation of said Paragraph.

27 155. In answer to Paragraph 155 of the Amended Complaint, Forever 21 denies
28 each and every allegation of said Paragraph.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

156. The Amended Complaint, in whole or in part, fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

(Waiver)

157. bebe's claims, and each of them, are barred, in whole or in part, by the defense of waiver.

THIRD AFFIRMATIVE DEFENSE

(Laches)

158. bebe's claims, and each of them, are barred, in whole or in part, by the defense of laches.

FOURTH AFFIRMATIVE DEFENSE

(Estoppel)

159. bebe's claims, and each of them, are barred, in whole or in part, by the defense of estoppel.

FIFTH AFFIRMATIVE DEFENSE

(No Subject Matter Jurisdiction)

160. bebe's claims, and each of them, are barred, in whole or in part, because the Court lacks subject matter jurisdiction, including because bebe's claims are not ripe, are moot, or because bebe has not complied with the registration requirements for the alleged copyrights that it claims were infringed.

SIXTH AFFIRMATIVE DEFENSE

(Consent)

161. bebe expressly or impliedly consented to the conduct alleged in the Amended Complaint, and Forever 21 therefore has no liability to bebe.

SEVENTH AFFIRMATIVE DEFENSE

(Fair Use)

162. bebe's claims based upon alleged copyright infringement are barred, in whole or in part, because any use of bebe's alleged copyrights by Forever 21 constitutes fair use.

EIGHTH AFFIRMATIVE DEFENSE

(Fraud)

163. bebe's claims of alleged copyright infringement are barred because of bebe's fraud in its application for a U.S. copyright registration.

NINTH AFFIRMATIVE DEFENSE

(Derivative Works)

164. bebe's claims based upon alleged copyright infringement are barred, in whole or in part, because the alleged copyrighted works are derivative works based upon works in which Forever 21 owns the copyright.

TENTH AFFIRMATIVE DEFENSE

(De Minimis Use)

165. bebe's claims based upon alleged copyright infringement are barred, in whole or in part, because any used of bebe's alleged copyrights by Forever 21 was *de minimis*.

ELEVENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damage)

166. Forever 21 denies that bebe has suffered any damages, but to the extent it has, bebe's claims for damages are barred, in whole or in part, because bebe failed to take reasonable steps to mitigate its damages.

TWELFTH AFFIRMATIVE DEFENSE

(Unclean Hands)

167. bebe's claims, and each of them, against Forever 21 are barred, in whole or in part, by the doctrine of unclean hands.

THIRTEENTH AFFIRMATIVE DEFENSE

(Federal Preemption)

168. bebe's claims under are barred by Federal preemption.

FOURTEENTH AFFIRMATIVE DEFENSE

(Innocent Infringement-Copyright)

169. Forever 21 denies that it infringed any alleged copyrights of bebe, but to the extent they did, Forever 21 acted with innocent intent, including that under 17 U.S.C. § 504 (c)(2) any award of statutory damages should be reduced accordingly.

FIFTEENTH AFFIRMATIVE DEFENSE

(Functionality)

170. bebe's copyright claims are barred in whole or in part by the doctrine of functionality.

SIXTEENTH AFFIRMATIVE DEFENSE

(Acquiescence)

171. Plaintiff's claims are barred by the doctrine of acquiescence.

SEVENTEENTH AFFIRMATIVE DEFENSE

(No Infringement)

172. The design of Forever 21's products has not caused, and is not likely to cause, confusion among the customers and potential customers as to the source of origin, endorsement, approval, or sponsorship of its products.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Valid Competition)

173. Some or all of the claims for relief in the Complaint are barred because the conduct alleged by Plaintiffs was privileged to the extent that Forever 21 may be considered a competitor of Plaintiffs and the actions alleged concern matters within the scope of such privilege.

NINETEENTH AFFIRMATIVE DEFENSE

(Intent to Injure Competition/Restraint of Free Trade)

174. Plaintiffs have used, and continue to use, whatever trademark rights they may

1 have, the existence of which are specifically denied, with the intent and result of restraining trade
2 and of injuring competition, such that Plaintiffs' alleged trademark rights are unenforceable in this
3 action.

4 **TWENTIETH AFFIRMATIVE DEFENSE**

5 (Lack of Causation)

6 175. To the extent any infringement occurred, which Forever 21 denies, Plaintiffs
7 are not entitled to recover any damages due to lack of causation.

8 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

9 (No Willful Infringement-Trademark)

10 176. Forever 21 at all times acted in good faith, has not infringed the marks at
11 issue, and has not willfully infringed the marks at issue.

12 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

13 (Bad Faith of Plaintiffs)

14 177. The allegations and claims asserted in the Amended Complaint, and each of
15 the purported causes of action alleged therein, have always been and continue to be frivolous,
16 unreasonable, and groundless. Plaintiffs brought this action in bad faith. Plaintiffs' award, if any,
17 should be reduced or eliminated by Plaintiffs' own bad faith.

18 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

19 (Insufficiency of Allegations Regarding Punitive Damages)

20 178. The Complaint fails to state facts sufficient to warrant an award of punitive or
21 exemplary damages.

22 179. Forever 21 has insufficient knowledge or information upon which to form a
23 belief as to whether it may have additional, as yet unstated, separate defenses available and hence
24 reserves the right to amend this Answer to add, delete, or modify defenses based upon legal theories
25 that may or will be divulged through discovery or the factual bases for bebe's claims or further legal
26 analysis.

27 WHEREFORE, Forever 21 prays for judgment as follows:

28 1. That the Amended Complaint and each claim for relief therein be dismissed

1 with prejudice;

2 2. That bebe take nothing by its Amended Complaint;

3 3. That Forever 21 be awarded its costs incurred herein, including attorney fees;

4 and

5 4. That the Court order such other and further relief for Forever 21 as the Court
6 may deem just and proper.

7
8 DATED: June 8, 2007

JEFFER, MANGELS, BUTLER & MARMARO LLP
PAUL L. WARNER

9
10 By: /s/ Paul L. Warner

11 PAUL L. WARNER

12 Attorneys for Defendants Forever 21, Inc.; Forever 21
13 Retail, Inc.; Forever 21 Logistics, LLC; Forever XXI,
14 Inc.; and For Love 21.

JMBM | Jeffer Mangels
Butler & Marmaro LLP